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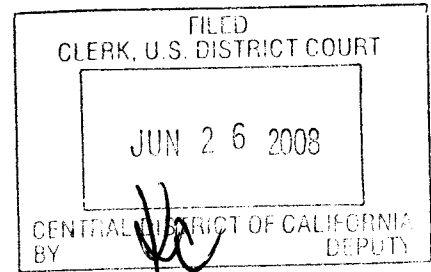
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DWAYNE P. OTTINGER, III,

Plaintiff,

v.

JAMIE A. VAN ROSSEN, et al.,

Defendants.

Case No. CV 06-2691 PSG(JC)

~~(PENDING)~~

ORDER ADOPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed all of the records herein, the Report and Recommendation of United States Magistrate Judge ("Report and Recommendation") and plaintiff's objections to the Report and Recommendation ("Objections").¹ The Court has further made a de novo

¹To the extent petitioner's unverified Objections assert new theories or facts which plaintiff did not present in connection with Defendants' Motion to Dismiss the First Amended Complaint ("Motion to Dismiss"), the Court exercises its discretion not to consider such matters. The Notice of Filing of Magistrate Judge's Report and Recommendation cautioned the parties in boldface print that the Court would not consider objections raising new theories or evidence which could have been, but was not previously presented to the Court. Further, plaintiff offers no evidentiary support for the factual assertions in either his Objections or his Response and Objection to the Motion to Dismiss ("Opposition") despite the fact that on March 12, 2008, the Court cautioned plaintiff that he should not simply rely on the allegations in the First Amended

(continued...)

determination of those portions of the Report and Recommendation to which objection is made. The Court concurs with and adopts the findings, conclusions, and recommendations of the United States Magistrate Judge and overrules the Objections.²

IT IS ORDERED that: (1) Defendants' Motion to Dismiss is granted; and (2) Judgment be entered dismissing this action without prejudice.

IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the Report and Recommendation, and the Judgment herein on plaintiff and on counsel for defendants.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: 6/26/08


HONORABLE PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

¹(...continued)

Complaint and that his failure to submit or to point to evidence contradicting defendants' contentions might result in dismissal of the case. To the extent plaintiff suggests that the magistrate judge's decision staying discovery in this matter impacted his ability to acquire evidence in support of his Opposition to the Motion to Dismiss, this Court notes: (1) the order staying discovery was issued on April 28, 2008 *after* plaintiff filed his Opposition to the Motion to Dismiss; (2) plaintiff fails to demonstrate that the stay order prevented him from acquiring and presenting evidence in support of his Opposition and Objections or to specify what evidence he anticipates he likely would have been able to acquire and present in support of such submissions but for the stay; (3) the stay was proper as dismissal was sought based in part upon qualified immunity.

²Plaintiff objects to the portion of the Report and Recommendation which reflects that plaintiff does not dispute any of the facts upon which N. Grannis bases his/her conclusion that plaintiff has not exhausted his administrative remedies. (Objections at 1) (citing Report and Recommendation at 12). The Report and Recommendation discusses plaintiff's alleged non-dispute of Grannis' predicate facts in the context of rejecting plaintiff's contention that N. Grannis is biased and that the evidence he/she has presented should be discounted. Plaintiff now indicates that he does in fact dispute said predicate facts. (Objections at 1). However, even acknowledging plaintiff's dispute of such facts does not alter this Court's conclusion that there is no evidence that N. Grannis is biased and no basis in the record upon which to reject the evidence Grannis has presented.